KOH LEE BENG & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Wee Chong Jin C.J., Tan Ah Tah and Winslow JJ.) May 4, 1970]

[Singapore — Federal Court Criminal Appeal No. Y. 20 of 1969]

Criminal Law and Procedure — Sentence — Racial violence — Penal Code, s. 324.

Penal Code, s. 324 — Voluntarily causing hurt with a dangerous weapon — Racial hostility — Maximum sentence.

The accused had been convicted for attempting to murder one Azman bin Yahaya while with another accomplice during a period of racial tension. Azman was said to have been stabbed by the first appellant while being held by the other two men in the Jalan Kayu area at about 11 a.m. on June 13, 1969. The accused were sentenced to 10 years imprisonment. On appeal it was argued that the learned trial judge had erred in law in holding that the appellants had the intention to kill their victim.

Held: (1) the evidence in this case fell short of establishing an intention to commit murder and therefore the conviction under section 307 of the Penal Code cannot stand;

(2) the evidence did not show that the injury to the victim was such that that his life was ever in danger and therefore the accused could not be convicted of causing grievous hurt with a dangerous weapon but only of voluntarily causing hurt with a dangerous weapon;

(3) whatever the situation in the country may be, no one who causes physical injury to someone else motivated or actuated solely by racial hostility, if he is convicted and the facts bear out such motive, can expect to be dealt with other than with the utmost severity and unless there are mitigating circumstances he can expect to be sentenced or punished to the maximum allowed by the law and therefore in this case where there were no mitigating circumstances the accused must be sentenced to three years imprisonment and three strokes of the rattan each.

COURT OF CRIMINAL APPEAL.

S. K. Lee for the appellants.

K. S. Rajah (Deputy Public Prosecutor) for the respondent.

Wee Chong Jin C.J. (delivering oral judgment): I think we have indicated during the hearing of this appeal our view on whether the conviction of the two appellants under section 307 of the Penal Code can stand. It is in our judgment clear that the evidence falls short of establishing an intention to commit murder and that being so this conviction cannot stand. Neither can it be said on the evidence that the offence which was committed by the two appellants together with their third companion was such that it amounted to an offence under section 326 of the Penal Code, that is causing grievous hurt with a dangerous weapon Unfortunately section 320 of the Code has defined grievous hurt as, among other things, any hurt which endangers life. It is submitted that on the evidence the medical evidence would support the finding that the victim's life was in danger but we think it is clear on the evidence that at no stage was there any evidence to suggest that the injury to the victim was such that his life was ever in danger. That may be fortunate for the appellants so that we are left with only one offence which is disclosed by the evidence and that is the offence of voluntarily causing hurt by a dangerous weapon namely an offence under section 324 of the Penal Code.

Bearing in mind that this offence was committed at the time when the racial disturbances which overflowed into Singapore were at its height, we must, as did the trial judge, take an extremely serious view. Whatever the situation in the country may be, no one who causes physical injury to someone else motivated or actuated purely by racial hostility, if he is convicted and the facts bear out such a motive, can expect to be dealt with other than with the utmost severity and unless there are any mitigating circumstances he can expect to be sentenced or punished to the maximum extent allowed by the law so that in this particular case where there are no mitigating circumstances at all we in setting aside their conviction under section 307 and the sentence imposed for that conviction substitute a conviction under section 324 and impose the maximum sentence we can impose of imprisonment for a term of three years to commence from the date of their conviction in the trial court and it is, having regard to the circumstances, a proper case where each of them will also be punished besides a term of imprisonment to undergo caning and each of them will be punished with three strokes of the cane besides the term of imprisonment.

Order accordingly.

Solicitors: *S. K. Lee & Co.*

SHAMSUDIN v. VIJEYACONE

[O.C.J. (Chua J.) November 8, 1969]

[Singapore — Suit No. 486 of 1969]

Moneylenders — Whether person a moneylender — Presumption — Burden on defendant to show he is not a moneylender — Unlawful transaction — Effect of — Moneylenders Ordinance, 1959, s. 3.

The plaintiff sought a declaration that a mortgage of property by him to the defendant was null and void on the ground that the defendant was at the material time carrying on the business of moneylending and had no licence to do so.

Held: in the circumstances of this case the evidence showed that there was some degree of system and continuity in the defendant's moneylending transactions and therefore it was more probable than not that the defendant was carrying on the business of moneylending. As he did not have a licence to carry on the business of moneylending the transaction between him and the plaintiff was therefore unlawful and void and could confer no rights.

Case referred to:-

(1) *Cornelius* v. *Phillips*, [1918] 1 A.C. 199.

CIVIL SUIT.

G. Raman for the plaintiff.

J. B. Jeyaretnam (*S. Gunaratnam* with him) for the defendant.

Chua J.: The plaintiff's evidence was briefly this. Sometime in September, 1966, he needed $2,000 for his business. He told his friend Yahaya bin Haji Mohamed Ghouse of it. Yahaya told him that his